

Exhibit N

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1 N O T I C E

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15 case preparation and is not to be construed as the
16 final transcript. It is not to be read by the witness
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18 may not be filed with any court.

19
20 UNITED STATES DISTRICT COURT
21 FOR THE DISTRICT OF MASSACHUSETTS
22 - - - - -X

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1 IN RE: PHARMACEUTICAL : MDL NO. 1456
2 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

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1 Videotaped Deposition of THOMAS A.
2 SCULLY, a witness herein, called for examination by
3 counsel for Abbott Laboratories in the above-entitled
4 matter, pursuant to subpoena, the witness being duly
5 sworn by Cassandra E. Ellis, a Notary Public in and
6 for the District of Columbia, taken at the offices of
7 Jones Day, 51 Louisiana Avenue, Northwest, Washington,
8 D.C., at 8:50 a.m. on Friday, July 13, 2007, and the
9 proceedings being taken down by Stenotype by CASSANDRA
10 E. ELLIS, RPR, Livenote Certified Reporter, and
11 transcribed under her direction.

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1 WACs and the AMPses decline over time right.

2 MR. RIKLIN: Objection to form.

3 MR. NEAL: I'll join in the objection you
4 can answer.

5 A Yes.

6 Q Now if you turn to page 13 of the
7 complaint, exhibit 28, just read to yourself paragraph
8 40?

9 A Yes.

10 Q Okay. Now this is a complaint that was
11 signed the 22nd Day of August, 2006, and on paragraph
12 40 in the first sentence it says, AWP is used to refer
13 to the price at which a pharmaceutical firm or a whole
14 saler sells a drug to a retail customer who then
15 administers it to a patient, do you see that?

16 A Yes.

17 Q That's not what AWP was viewed as that's
18 not the view of CMS as to what AWP was?

19 MR. NEAL: Objection as to form.

20 BY MR. ESCOBAR:

21 Q Is it?

22 MR. NEAL: This is not a 30 (b)(6) this is

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1 into the a 30 (b)(6) deposition you can answer.

2 A No, I don't think that's what AWP is

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3 commonly considered to be I think that's an inaccurate
4 description.

5 Q In fact that's a completely inaccurate
6 statement of AWP right?

7 MR. NEAL: Objection as to form.

8 A I think it's probably a poor description
9 yes.

10 Q Because it's not accurate?

11 A Yes.

12 MR. NEAL: Objection as to form.

13 BY MR. ESCOBAR:

14 Q Now you would think that -- well let's take
15 the next one -- WAC is used to refer to the price at
16 which a pharmaceutical firm typically sells a drug to
17 wholesalers who will then resell it to a retail
18 customer; do you see that?

19 A Yes.

20 Q And that's a description of what WAC is, is
21 also not accurate; is it?

22 MR. NEAL: Objection as to form.

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1 A Well, a little closer.

2 Q But it's not accurate, is it?

3 MR. NEAL: Objection.

4 A Probably not totally accurate.

5 Q In fact, that sentence where the government
6 describes in the complaint against Dey what WAC is,
7 this does not include the fact that it's shall a list
8 price before a discounts which is the actual

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1 somebody actually pays.

2 Q And you'll agree with me paragraph 42
3 doesn't talk about or doesn't say that AWP should be
4 the price at which a pharmaceutical manufacturer sells
5 a product to its customer; correct?

6 A No, I --

7 MR. GOBENA: Objection to the form, the
8 document speaks for itself.

9 A Yeah, I didn't say that, either. I said,
10 you could look at this and say, in a dictionary, if
11 that's what you thought to define AWP as, in a very
12 basic way that's one way that you can look at it, I
13 don't think it's an accurate reflection of how it
14 works in the real word.

15 Q And, in fact, paragraph 42, in Exhibit 19,
16 purports to refer to the way AWP is used in the real
17 world; correct?

18 MR. RIKLIN: Objection to form.

19 MR. GOBENA: Objection to form, the
20 document speaks for itself.

21 A I don't know. I would have to read the
22 whole -- yeah, I'm not sure of the context it's in.

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1 Q well, let's talk about paragraph 42. The
2 sentence reads that AWP is used to refer to the price
3 which a pharmaceutical firm or a wholesaler sells a
4 drug to a retail customer, who then administers it to

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5 a patient, to start with, do you use average wholesale
6 price to refer to the price at which a firm sells a
7 drug to a wholesaler or a customer?

8 MR. GOBENA: Object to the form.

9 A Do I -- do I have my government context, I
10 would say no.

11 Q All right. Have you ever used average
12 wholesale price to refer to the price at which a
13 pharmaceutical firm or a wholesaler sells a drug to a
14 retail customer?

15 A No.

16 MR. GOBENA: Object to the form.

17 BY MR. COOK:

18 Q Have you ever heard anybody else use AWP to
19 refer to the price of which a pharmaceutical firm or a
20 wholesaler sells a drug to a retail customer?

21 MR. GOBENA: Object to the form.

22 A No.

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1 Q And when you talk about what average
2 wholesale price is supposed to be you're referring to,
3 I assume, and you can tell me if I'm correct, the
4 dictionary definition for the words, average,
5 wholesale, and price?

6 A Yes.

7 Q You're not referring to the manner in which
8 it's ever been used, commonly, in the industry;
9 correct?

10 MR. GOBENA: Object to the form.